

DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 I Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Washington Direct Dial (202) 955-6631

E-Mail Address: KerstingA@dsmo.com

March 11, 2004

By Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
c/o 236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002
Attn: Audio Division, Media Bureau

Re: Petition for Rulemaking to Amend Section 73.202(b),
Table of Allotments, FM Broadcast Stations,
(San Luis Obispo and Lost Hills, California)

Dear Ms. Dortch:

Transmitted herewith on behalf of GTM San Luis Obispo, licensee of radio station KLRM(FM), San Luis Obispo, California, are an original and four copies of a Petition for Rulemaking seeking to amend Section 73.202(b) of the Commission's rules.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP

Attorneys for
GTM San Luis Obispo

By Andrew S. Kersting
Andrew S. Kersting

Enclosure

cc: Certificate of Service (w/ encl.) (by hand)

No. of Copies rec'd 04
List ABOVE
MB 04-46

1177 Avenue of the Americas • New York, NY 10036-2714

Tel (212) 835-1400 • Fax (212) 997-9880

www.DicksteinShapiro.com

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 11 2004

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No ____
Table of Allotments,) RM-____
FM Broadcast Stations)
(San Luis Obispo and Lost Hills, California)

To Assistant Chief, Audio Division

PETITION FOR RULEMAKING

GTM San Luis Obispo ("GTM"), licensee of radio station KLRM(FM), San Luis Obispo, California, acting pursuant to Section 1.420(i) of the Commission's rules, 47 C.F.R. §1.420(i), hereby requests that the Commission institute a rulemaking proceeding for the purpose of amending the FM Table of Allotments to substitute Channel 245B1 for Channel 246B1 at San Luis Obispo, California, reallocate Channel 245B1 from San Luis Obispo to Lost Hills, California, and modify the license for KLRM to specify Lost Hills as its community of license in accordance with *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Thus, GTM proposes to amend Section 73.202(b) of the Commission's rules as follows:

	<u>Channel No.</u>	
<u>City</u>	<u>Present</u>	<u>Proposed</u>
San Luis Obispo	227B, 241B, 246B1, 251B	227B, 241B, 251B
Lost Hills	289A	289A, 245B1

The proposed reallocation would serve the public interest by providing the community of Lost Hills with its second local service and first competitive FM service. The Commission has previously found that Lost Hills is a community for allotment purposes. *See Lost Hills, California, et al*, 14 FCC Red 14093 (A.B. 1999) (allocating Channel 289A to Lost Hills as its first local transmission service). The community of Lost Hills is a Census Designated Place located in Kern County, California which has a 2000 U.S. Census population of 1,938. The community has its own zip code, post office, fire department, water department, school district, and local businesses.

As demonstrated in the attached Engineering Statement of John J. Mullaney, the proposed allotment reference coordinates satisfy the minimum distance separation requirements with respect to all known licenses, construction permits, pending applications, and pending rulemaking proposals. The allotment reference point is located approximately 18 kilometers south of Lost Hills, would enable the station to operate from a site with an unobstructed view of the community, and would provide the requisite 70 dBu contour over the entire community of license.

The balance of public interest factors favors a grant of the proposed allotment. KLRM currently serves 215,195 persons within its 60 dBu contour. The reallocation of Channel 245B1 from San Luis Obispo to Lost Hills has the potential to serve 204,140 persons within KLRM's 60 dBu contour. Thus, the proposed reallocation of Channel 245B1 to Lost Hills would result in a loss of service to 11,055 persons within KLRM's service contour. *See Engineering Statement at 3*. This loss of service, however, is more than offset by the fact that KLRM would bring a second aural service and a first competitive FM service to Lost Hills. More importantly, the reallocation of Channel 245B1 to Lost Hills would bring what, in effect, would constitute the first on-air service to that community. Although Channel 289A was assigned to Lost Hills in

1999, it continues to remain vacant. It is unlikely that service will commence on Channel 289A at Lost Hills in the foreseeable future because the Commission has yet to reschedule FM Auction No. 37. *See, e.g., Grants and Bosque Farms, New Mexico*, 18 FCC Rcd 11239, 11241 (A.D. 2003) (recognizing that the Commission's auction procedures are "both uncertain and time-consuming . . . especially during the current hiatus in broadcast auctions").

Other factors further support the proposed reallocation. If the proposed reallocation is adopted, the community of San Luis Obispo will continue to have at least two FM stations allotted to it and will receive service from a minimum of six FM stations (including Channel 245B1 at Lost Hills) and four AM stations.¹ Therefore, the community of San Luis Obispo will continue to be well served. *See Temple and Taylor, Texas*, 12 FCC Rcd 13755, 13756 (A.B. 1997) (proposed reallocation would not create any underserved areas where the loss area would continue to receive service from a minimum of four FM and two AM stations).

In sum, then, the proposed reallocation of Channel 245B1 to Lost Hills would provide the community with its second local broadcast service, its first competitive FM service, and its first on-air broadcast service. Thus, GTM's proposal presents a preferential reallocation plan under the fourth allotment priority set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 n.8 (1982). If this petition requesting the reallocation of Channel 245B1 to Lost Hills is granted, GTM will file an application for a construction permit for the modified facility, and, if its application is granted, will promptly construct the new facility at Lost Hills.

¹ Contemporaneous with the filing of this petition, the licensee of radio station KKJG(FM), San Luis Obispo, California, has filed a Petition for Rulemaking requesting the substitution of Channel 251B1 for Channel 251B at San Luis Obispo and the reallocation of Channel 251B1 to Buttonwillow, California.

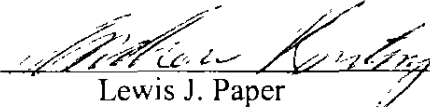
WHEREFORE, in light of the foregoing, GTM respectfully requests that the Commission (i) grant this Petition for Rulemaking, (ii) amend the FM Table of Allotments by substituting Channel 245B1 for Channel 246B1 at San Luis Obispo, California, and reallocate Channel 245B1 from San Luis Obispo to Lost Hills, California, and (iii) modify the license for KLRM to specify Lost Hills as its community of license.

Respectfully submitted,

Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N W
Washington, DC 20037-1526
Telephone: (202) 785-9700
Fax: (202) 887-0689
E-mail: paperl@dsmo.com

Attorneys for
GTM SAN LUIS OBISPO

By: _____


Lewis J. Paper
Andrew S. Kersting

JOHN J. MULLANEY
JOHN H. MULLANEY, P.E. (1994)
~~ALAN E. GEARING, P.E.~~
TIMOTHY Z. SAWYER

301 921-0115 Voice
301 590-9757 Fax
Mullaney@MullEngr.com

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG MD 20877

ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 245B1 TO LOST HILLS, CA
FROM SAN LUIS OBISPO, CA**

FEBRUARY 20, 2004

ENGINEERING STATEMENT PREPARED ON BEHALF OF
GTM SAN LUIS OBISPO
LICENSEE OF KLRM (FM) - SAN LUIS OBISPO, CA

ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 245B1 TO LOST HILLS, CA
FROM SAN LUIS OBISPO, CA**

TABLE OF CONTENTS:

- 1 Declaration of Engineer
- 2 Narrative Statement
- 3 Channel Allocation Studies
- 4 Figure 1, Ch 245B1 - KLRM - to Lost Hills, CA - Spec Ref Site.

Declaration

I, John J Mullaney, declare and state that I am a graduate electrical engineer with a B E E and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission

The firm of Mullaney Engineering, Inc , has been requested by GTM San Luis Obispo, to prepare the instant engineering exhibit in support of a rule making petition to amend the FM Table of Allotments

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true I declare under penalty of perjury that the foregoing is true and correct

/s/ John J Mullaney

John J Mullaney, Consulting Engineer

Executed on the 20th day of February 2004

ENGINEERING EXHIBIT EE-RM:

**RULE MAKING TO AMEND
FM TABLE OF ALLOTMENTS**

**MOVE Ch. 245B1 TO LOST HILLS, CA
FROM SAN LUIS OBISPO, CA**

NARRATIVE STATEMENT

This engineering statement has been prepared on behalf of GTM San Luis Obispo, ("GTM"), licensee of Radio Station KLRM at San Luis Obispo, California. This engineering exhibit supports a petition to amend the FM table of allotments

GTM proposes to allot Ch. 245B1 at Lost Hills, CA, in lieu of its present operation of 246B1 at San Luis Obispo, CA, and to modify the license of KLRM accordingly. In order to accomplish this no other changes are necessary.

The city of San Luis Obispo, CA, will continue to be served by at least ten aural services (four AM & six FM) and grant of this proposal will result in the **second aural service** to Lost Hills, CA, (1,938 persons, 2000 Census). Channel 289A is currently allotted to Lost Hills and is presently vacant.

KLRM wishes to point out that the new city of license it seeks is on its existing first adjacent channel (245 in lieu of 246) with a proposed location which is less than the separation specified by Section 73.207 (114 km) and, thus, is mutually exclusive with its existing authorization in accordance with Section 1.420(i) of the rules.

The proposed reference point is not within 290 kilometers (180 miles) of a United States Border and, therefore, foreign concurrence is not required.

PROPOSAL

For the purposes of this rule making the allotment of **Ch. 245B1** will rely upon the use of a special reference point located 18km south of **Lost Hills, CA**

N Latitude	35°	28'	00"	NAD-27
W Longitude	119°	41'	00"	

The proposed reference site will provide an unobstructed view of the city of license and is located close enough to serve the entire community with the required 3 16 mV/M or 70 dBu contour

Channel Allocation Studies

Figures 1 is a channel study demonstrating that the proposed use of the specified channel is in full compliance with the FCC's separation requirements. All of the studies rely on a special reference point which is well within the reference city grade radius of its proposed class and has an unobstructed view of the city. The studies indicate the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. From these studies it can be determined that proposed reference points exceed all of these minimum separations provided the additional swaps are implemented. The **reference coordinates** relied upon are tabulated in the upper left portion of each of the channel studies.

Figure 1 demonstrates that the proposed relocation of Ch. 245B1 from the special reference coordinates for use by KLRM at Lost Hills, CA, complies with the rules. The coordinates of the special reference point 18 km WSW of city are **35-28-00 / 119-41-00**. This proposal requires no other channel changes.

Public Interest Showing

The community of San Luis Obispo, CA, will remain well served with **at least** 10 other aural services. All of the populations provided herein are based upon a computer analysis of the 2000 Census.

The relocation of KLRM to 245B1 at **Lost Hills, CA**, has the potential for 60 dBu service to 204,140 persons. KLRM presently serves 215,195 persons and thus, this represents a loss of 11,055 persons. However, KLRM believes this loss of raw population served is more than offset by the fact that KLRM will be the second aural service licensed to the city. Given the present freeze on new applications, KLRM's operation will most likely be the **first local service** to the community.

GTM has presented a plan which is a more efficient use of the limited frequency spectrum in & around California. All parties to the proceeding get channels equivalent to what they have requested.

Based upon the above information, GTM believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.

SUMMARY

GTM San Luis Obispo, licensee of Radio Station KLRM at San Luis Obispo, California, requests that the FM Table of Allotments be amended as presented herein

GTM requests that the Commission's FM Table of Allotments be revised as follows

Community	Present	Proposal
San Luis Obispo, CA - KLRM	246B1	Deletion
Lost Hills, CA - KLRM	289A	289A & 245B1

Note only the channels under discussion herein are shown in above table.

Based upon the information presented herein, GTM believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest. If granted, KLRM will quickly file an application for construction permit.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

February 20, 2004

GTM SAN LUIS OBISPO PROPOSED RULE MAKING - LOST HILLS, CA

REFERENCE		DISPLAY DATES
35 28 00 N	CLASS = B1	DATA 02-20-04
119 41 00 W	Current Spacings	SEARCH 02-20-04
----- Channel 245 - 96.9 MHz -----		

Call	Channel	Location	Dist	Azi	FCC	Margin

LH-01	245B1	Lost Hills, KLRM	CA 0.00	0.0	174.5	
KLRM	LIC-Z 246B1	San Luis Obispo	CA 89 09	262 6	113.5	-24 41 Self
ALLO	VAC 247A	McFarland	CA 38.39	53.6	47 5	-9.11 to 282A
KWAV	LIC 245B	Monterey	CA 211 07	304 8	210 5	0 57
KSEQ	LIC 246B	Visalia	CA 145.87	26 9	144.5	1 37
KKXXFM	LIC 243B	Bakersfield	CA 72.15	88.1	70.5	1 65
KSYV C	CP 244A	Solvang	CA 101 13	211.8	95 5	5.63
KSYV	LIC 244A	Solvang	CA 104 12	203 9	95 5	8.62
KEZL	LIC-D 244B1	Fowler	CA 136 27	358.2	113 5	22.77
ALLO	VAC 247A	Lamont	CA 78 32	111 5	47 5	30 82
KMGQ	LIC 248B	Santa Barbara	CA 107 40	193 5	70 5	36 90

Docket 03-64 substituted 282A for 247A at McFarland, CA

Proposed Reference Site: 18 km South of City

CH 251B1 - MOVE KLRM TO - LOST HILLS, CA

AGM SAN LUIS OBISPO, L.P.
PROPOSED RULEMAKING PROPOSAL
SAN LUIS OBISPO TO LOST HILLS, CA

MULLANEY ENGINEERING, INC.
GAITHERSBURG, MARYLAND

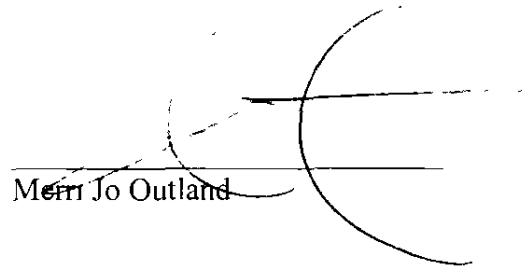
FIGURE 1
FEBRUARY 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of March, 2004, a copy of the foregoing
“Petition for Rulemaking” was hand delivered to the following:

John A. Karousos, Chief
Audio Division
Media Bureau
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room 3-A266
Washington, DC 20554

Robert Hayne
Audio Division
Media Bureau
Federal Communications Commission
The Portals II
445 Twelfth Street, S.W.
Room 2-B450
Washington, DC 20554



Merr Jo Outland